

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

LUCIA PITCHER,

Plaintiff,

vs.

MICHAEL J. ASTRUE,
 COMMISSIONER OF SOCIAL
 SECURITY ADMINISTRATION,

Defendant.

Case No. 2:12-cv-01499-JCM-CWH

**FINDINGS AND
 RECOMMENDATION**

Plaintiff submitted an Application to Proceed *in Forma Pauperis* (#1) and Complaint on August 23, 2012. On August 30, 2012, the Court granted Plaintiff's Application to Proceed *in Forma Pauperis* (#1) and ordered the Clerk of the Court to file Plaintiff's Complaint. In addition, the Court ordered that the Complaint be dismissed without prejudice and granted Plaintiff thirty (30) days from to file an amended complaint correcting the noted deficiencies.

Plaintiff did not adequately allege that her Application was timely filed or equitable tolling applies. For the Application to be timely, Plaintiff needed to file it by August 9, 2012, which is 60 days after her receipt of the Notice of Appeals Council Action. As a result, the Court found that Plaintiff did not demonstrate that she can obtain judicial review of the Commissioner's decision. More than thirty days have elapsed since the Court's Order dismissing Plaintiff's Complaint without prejudice and Plaintiff has not submitted an amending complaint with sufficient facts to state a cognizable claim.

Based on the foregoing and good cause appearing therefore,

RECOMMENDATION

IT IS HEREBY RECOMMENDED that Plaintiff's Complaint (#3) be **dismissed with prejudice** because Plaintiff failed to file an amended complaint within 30 days of the Court's

August 30, 2012 Order.

NOTICE

Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be in writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has held that the courts of appeal may determine that an appeal has been waived due to the failure to file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1) failure to file objections within the specified time and (2) failure to properly address and brief the objectionable issues waives the right to appeal the District Court's order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

DATED this 1st day of October, 2012.



C.W. Hoffman, Jr.
United States Magistrate Judge